

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBRA L. LEWIS,)
Plaintiff,)
V.) Civil No. **05-776-WDS**
SCHOOL DISTRICT # 70, et al.,)
Defendants.)

ORDER

PROUD, Magistrate Judge:

Plaintiff's counsel/husband, David E. Lewis, is before the Court seeking to quash the deposition subpoena propounded by counsel for defendant Shane Jones, who is also counsel for the defendant school district. (**Doc. 45**). By order dated August 11, 2006, the deposition was stayed, pending further briefing regarding what line of questioning defendant Jones desired to pursue, and what privileges Mr. Lewis was claiming. (**Doc. 48**). Those issues have now been fully briefed. (**Docs. 59 and 61**).

At the time the subpoena was issued, only one claim remained that was specific to defendant Jones, the defendant school district's attorney— Count III, alleging defamation. The allegedly defamatory statement was made in an e-mail to David E. Lewis. (**Doc. 2-2, pp. 18-19 (as numbered in the CM-ECF system)**) (“**The District has determined that Ms. Lewis's performance in the bookkeeper job assignment is not satisfactory.**”). The deposition subpoena was propounded on behalf of defendant Jones, not the defendant School District. (**Doc. 45, p. 15 (as numbered in the CM-ECF system)**). Plaintiff disclosed Mr. Lewis as a fact witness. Jones' intended line of questioning pertained exclusively to Count III and issues at the

heart of Jones' motion for summary judgment. (**Doc. 59**).

By order dated September 6, 2006, U.S. District Judge William D. Stiehl granted Jones summary judgment as to the defamation claim, Count III. (**Doc. 63**). Only two claims in the complaint remain: Counts I and II, regarding the Family and Medical Leave Act and breach of contract. Defendant Jones is not named in Counts I and II. Therefore, defendant Jones' need to subpoena Mr. Lewis is now moot, and Jones' legal standing for the subpoena has evaporated.

IT IS THEREFORE ORDERED that plaintiff's motion for a protective order (**Doc. 45**) is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED: September 7, 2006

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE